

said: We need you to allow us, the biggest investment banks in the country, to extend our leverage from 12 times to 30 times and more. You need to give us the opportunity to free up some money by exacerbating the leverage capabilities we have. The Securities and Exchange Commission, ever the compliant regulatory agency, said: Yes, sir—saluting handily in the basement of their building—absolutely, go right ahead.

By the way, one of those companies was run by Mr. Paulson who, 2 years later, came back as Treasury Secretary and leaned across the lectern and said: I need \$700 billion to bail out these companies.

What was part and parcel of that which caused these companies to almost ruin this economy? Naked credit default swaps, just flatout gaming. Not investing, just betting. The question is, Do we want to continue to do that?

I fear we are going to pass a piece of legislation that does not address too big to fail. At the end of the day, we will have institutions that are still too big to fail. I have an amendment on that, but I haven't bothered because we already did one amendment on too big to fail, the Brown-Kaufman amendment. That got 33 votes, too big to fail. Banning these unbelievable speculative instruments like naked credit default swaps, if we can't do that, it is very hard, it seems to me, to climb on the high step and say we have taken on this subject. We have really made sure this isn't going to happen again. So I have an amendment that is filed, and now I am told that, no; it is inconvenient and uncomfortable for me to offer this amendment and, therefore, someone has objected.

To my colleague from Alabama, I would say I understand. He is required—when people in the caucus say there is an objection, his job is to reflect the objection of someone in his caucus. So my beef is not with him. But I would just say that it is not acceptable to me to, at 5 o'clock on Tuesday, have a process by which we have now decided that if amendments are inconvenient—getting a little too tough on Wall Street; trying to draw the strings a little tighter on things that have to be fixed in this bill—if that is the case, well, then, you know what. We are not going to allow those things to be offered. We will just sit here and offer amendments on tourism or something else equally benign.

If that is the case, then I will just sit here as well and say that is not a process I respect. It seems to me we ought to have the right to bring to this Chamber at this point, given the shadow of what we have been through as a country, the right to bring amendments to this bill that try to address some very significant problems; the right to bring them to the floor, to have a debate, and to offer them for a vote. If that is not going to be the case, then I am going to sit here and object to proceeding until it is the case.

So my colleague, Senator BINGAMAN, I know is here. I have more to say, but I will save it because I fully expect either to get to this amendment or to be sitting here for some long while, and I will have an opportunity again to talk about naked credit default swaps, their danger to this economy, and why, when this bill is done, it ought to include the provisions of amendment No. 4109 which bans the use of naked credit default swaps and says there is a place to gamble in America and it is not in a bank lobby.

If you want to put a Keno table or a blackjack table in a bank lobby, shame on you. We ought to pass this amendment, and, most importantly, we ought to allow amendments to be offered. I will sit here until that is the case.

I yield the floor.

The PRESIDING OFFICER. The Senator from New Mexico is recognized.

AMENDMENT NO. 3892, AS MODIFIED, TO
AMENDMENT NO. 3739

Mr. BINGAMAN. Madam President, I call up amendment No. 3892, as modified, for consideration.

The PRESIDING OFFICER (Mrs. HAGAN). The clerk will report.

The legislative clerk read as follows:

The Senator from New Mexico [Mr. BINGAMAN], for himself, Ms. MURKOWSKI, Mr. REID, Mr. BROWNBACK, Ms. CANTWELL, Mr. CORNYN, Mr. WYDEN, Mr. CORKER, Mr. INOUE, Mrs. MURRAY, and Mrs. SHAHEEN, proposes an amendment numbered 3892 to amendment No. 3739.

Mr. BINGAMAN. Madam President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To preserve the authority of the Federal Energy Regulatory Commission to ensure just and reasonable electric and natural gas rates and to protect the public interest)

On page 565, between lines 2 and 3, insert the following:

(e) JUST AND REASONABLE RATES.—Section 2(a)(1)(C) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)(C)) (as amended by section 717(a)) is amended by adding at the end the following:

“(vi) Notwithstanding the exclusive jurisdiction of the Commission with respect to accounts, agreements, and transactions involving swaps or contracts of sale of a commodity for future delivery under this Act, no provision of this Act shall be construed—

“(I) to supersede or limit the authority of the Federal Energy Regulatory Commission under the Federal Power Act (16 U.S.C. 791a et seq.) or the Natural Gas Act (15 U.S.C. 717 et seq.);

“(II) to restrict the Federal Energy Regulatory Commission from carrying out the duties and responsibilities of the Federal Energy Regulatory Commission to ensure just and reasonable rates and protect the public interest under the Acts described in subclause (I); or

“(III) to supersede or limit the authority of a State regulatory authority (as defined in section 3(21) of the Federal Power Act (16 U.S.C. 796(21)) that has jurisdiction to regulate rates and charges for the sale of electric energy within the State, or restrict that State regulatory authority from carrying out the duties and responsibilities of the

State regulatory authority pursuant to the jurisdiction of the State regulatory authority to regulate rates and charges for the transmission or sale of electric energy.”.

(f) PUBLIC INTEREST WAIVER.—Section 4(c) of the Commodity Exchange Act (7 U.S.C. 6(c)) (as amended by section 721(d)) is amended by adding at the end the following:

“(6) If the Commission determines that the exemption would be consistent with the public interest and the purposes of this Act, the Commission shall, in accordance with paragraphs (1) and (2), exempt from the requirements of this Act an agreement, contract, or transaction that is entered into—

“(A) pursuant to a tariff or rate schedule approved or permitted to take effect by the Federal Energy Regulatory Commission;

“(B) pursuant to a tariff or rate schedule establishing rates or charges for, or protocols governing, the sale of electric energy approved or permitted to take effect by the regulatory authority of the State or municipality having jurisdiction to regulate rates and charges for the sale of electric energy within the State or municipality; or

“(C) between entities described in section 201(f) of the Federal Power Act (16 U.S.C. 824(f)).”.

Mr. BINGAMAN. Madam President, the amendment that is before the Senate, No. 3892, as modified, is one I talked about at length a week ago last Friday, so it has now been about 11 days ago. I will summarize it again and make some comments about some of the things that have happened since then.

First, let me ask unanimous consent to add Senators SHAHEEN, MURRAY, and INOUE as cosponsors.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. BINGAMAN. Madam President, with the addition of those three Senators, the other cosponsors on the amendment are Senators MURKOWSKI, REID from Nevada, BROWNBACK, CANTWELL, WYDEN, CORNYN, and CORKER.

The amendment preserves the existing authority of the Federal Energy Regulatory Commission and the authority of the States to be sure that electricity and natural gas rates are just and reasonable, while at the same time leaving the Commodity Futures Trading Commission its full authority to police derivatives and futures markets.

First, I applaud the good work Senator DODD and Senator SHELBY have done on this bill. I particularly applaud the provisions that have come from Senators LINCOLN and CHAMBLISS and the Agriculture Committee in setting up a system to get control of derivatives markets.

I am, however, concerned that without this amendment, the law could be interpreted to allow the Commodity Futures Trading Commission to override the jurisdiction the Congress has given to the FERC and that the new provisions included here could make this problem worse.

There is probably not a sector of the economy that is more tightly regulated than the electricity industry. The natural gas industry is not far behind for a claim to that title. FERC regulates wholesale rates and transportation in